



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

**WILL WILSON**  
ATTORNEY GENERAL

April 6, 1962

Mr. Wayne Burns  
County Attorney  
Howard County  
Big Spring, Texas

Opinion No. WW-1302

Re: Whether the City Attorney  
or the County Attorney has  
the primary responsibility  
in prosecuting criminal  
cases appealed from the  
Corporation Court to the  
County Court.

Dear Mr. Burns:

You have requested an opinion from this office upon the question of whether the City Attorney or the County Attorney has the primary responsibility in prosecuting criminal cases appealed from the Corporation Court to the County Court in which a trial de novo is required.

Section 21 of Article V, Constitution of Texas, provides in part that:

" . . . The County Attorneys shall represent the State in all cases in the District and inferior courts in their respective counties; but if any county shall be included in a district in which there shall be a District Attorney, the respective duties of District Attorneys and County Attorneys shall in such counties be regulated by the Legislature. . . ." (Emphasis added)

Article 869, Vernon's Code of Criminal Procedure provides that:

"All prosecutions in a corporation court shall be conducted by the city attorney of such city, town or village, or by his deputy. The county attorney of the county in which said city, town or village is situated may, if he so desires, also represent the State in such prosecutions. In such cases, the said county attorney shall not be entitled to receive any fees or other compensation whatever for said services. The county

attorney shall have no power to dismiss any prosecution pending in said court unless for reasons filed and approved by the recorder."  
(Emphasis added)

Article 26, Vernon's Code of Criminal Procedure provides in part that:

"The county attorney shall attend the terms of all courts in his county below the grade of district court, and shall represent the State in all criminal cases under examination or prosecution in said county; . . ."

In the case of Howth v. Green, 90 S.W. 211 (Civ.App. 1905, error ref.) the court had before it the question of the authority of the county attorney to represent the State in cases before the Corporation Court involving violations of the penal laws of this State. The court in its opinion stated that pursuant to the provisions of Section 21 of Article V of the Constitution of Texas:

" . . . it was the right and duty of the county attorney to represent the state . . .

"The corporation court of the city of Beaumont being one of the inferior courts of the state referred to in the Constitution, the right of the county attorney to appear in said court, either by himself or his lawfully appointed deputy, and represent the state in all cases pending therein to which the state is a party, is indisputable. This right is also an exclusive right. If the county attorney, or his lawfully authorized deputy, appears and offers to represent the state in such cases, neither the city attorney nor any other officer or attorney has the right to take any part in such prosecution. Harris County v. Stewart, 91 Tex. 146, 41 S.W. 650. This is clear as to cases in which persons are charged with violation

of the criminal laws of the state, of which the corporation court has jurisdiction concurrently with justice courts. . . ." (Emphasis added)

By the express terms of the previously quoted constitutional and statutory provisions, and under the decision of the courts in such cases as Howth v. Green, supra, it appears clear that the County Attorney has the primary duty and responsibility of representing the State in all cases instituted for the violation of criminal laws of the State in all courts in his county inferior to the district court.

However, an exception to this statement is found in Attorney General's Opinion No. V-1147 (1951) wherein this office held that the County Attorney has no duty to represent the prosecution in Corporation Court when the offense is for a violation of a city ordinance and no penal statute of the State is involved. In such instances the primary responsibility of prosecuting the violation of a city ordinance is placed upon the City Attorney and participation by the County Attorney is merely discretionary or permissive as is evidenced by the language of Article 869, which states that the County Attorney ". . . may, if he so desires, also represent the State in such prosecutions . . . ."

Consequently, we are of the opinion that, in view of the constitutional and statutory provisions pertaining to the duties of the County Attorney, it is the primary responsibility and duty of the County Attorney to represent the State in all prosecutions for violation of the penal laws of this State when such violations are being prosecuted in any of the courts of the county below the level of district court. The exception to this rule is that the County Attorney does not have the primary responsibility and duty of representing the State in those cases in Corporation Court which concern violations of city ordinances rather than penal laws of this State.

As neither the constitutional nor statutory provisions heretofore cited contemplate anyone other than the County Attorney assuming the responsibility and duty of prosecuting criminal cases before the County Court,

Mr. Wayne Burns, Page 4 (WW-1302)

it would, in our opinion, necessarily follow that the primary duty and responsibility of prosecuting appeals from Corporation Court to County Court would rest upon the County Attorney.

S U M M A R Y

The primary responsibility and duty of prosecuting cases appealed from a Corporation Court to a County Court involving violations of the penal laws of this State rests upon the County Attorney.

Sincerely yours,

WILL WILSON  
Attorney General of Texas

  
Pat Bailey  
Assistant

PB:kkc

APPROVED

OPINION COMMITTEE  
W. V. Geppert, Chairman

Morgan Nesbitt  
Dudley McCalla  
Thomas Burrus  
Frank Booth

REVIEWED FOR THE ATTORNEY GENERAL  
BY: Houghton Brownlee, Jr.